

Introduced by Senator YeeFebruary 17, 2011

An act to amend Section 1798.91 of the Civil Code, relating to consumer privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 602, as introduced, Yee. Consumer privacy: medical information.

Existing law prohibits a business from requesting medical information directly from an individual and disclosing it for direct marketing purposes, as defined, without first informing the individual that the information will be used to market or advertise products to him or her and obtaining the individual's consent to use the information for that purpose.

This bill would make nonsubstantive changes to this provision regarding obtaining and disclosing medical information for direct marketing purposes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1798.91 of the Civil Code is amended
- 2 to read:
- 3 1798.91. (a) For purposes of this title, the following definitions
- 4 shall apply:
- 5 (1) "Direct marketing purposes" means the use of personal
- 6 information for marketing or advertising products, goods, or
- 7 services directly to individuals. "Direct marketing purposes" does

1 not include the use of personal information ~~(A) by~~ *in either of the*
2 *following circumstances:*

3 (A) *By* bona fide tax exempt charitable or religious organizations
4 to solicit charitable contributions ~~or (B) to~~.

5 (B) *To* raise funds from, and communicate with, individuals
6 regarding politics and government.

7 (2) “Medical information” means any individually identifiable
8 information, in electronic or physical form, regarding the
9 individual’s medical history, or medical treatment or diagnosis by
10 a health care professional. “Individually identifiable” means that
11 the medical information includes or contains any element of
12 personal identifying information sufficient to allow identification
13 of the individual, such as the individual’s name, address, electronic
14 mail address, telephone number, or social security number, or other
15 information that, alone or in combination with other publicly
16 available information, reveals the individual’s identity. For
17 purposes of this section, “medical information” does not mean a
18 subscription to, purchase of, or request for a periodical, book,
19 pamphlet, video, audio, or other multimedia product or nonprofit
20 association information.

21 (3) “Clear and conspicuous” means in larger type than the
22 surrounding text, or in contrasting type, font, or color to the
23 surrounding text of the same size, or set off from the surrounding
24 text of the same size by symbols or other marks that call attention
25 to the language.

26 (4) For purposes of this section, the collection of medical
27 information online constitutes “in writing.” For purposes of this
28 section, “written consent” includes consent obtained online.

29 (b) A business may not orally request medical information
30 directly from an individual regardless of whether the information
31 pertains to the individual or not, and use, share, or otherwise
32 disclose that information for direct marketing purposes, without
33 doing both of the following prior to obtaining that information:

34 (1) Orally disclosing to the individual in the same conversation
35 during which the business seeks to obtain the information, that it
36 is obtaining the information to market or advertise products, goods,
37 or services to the individual.

38 (2) Obtaining the consent of either the individual to whom the
39 information pertains or a person legally authorized to consent for
40 the individual, to permit his or her medical information to be used

1 or shared to market or advertise products, goods, or services to the
2 individual, and making and maintaining for two years after the
3 date of the conversation, an audio recording of the entire
4 conversation.

5 (c) A business may not request in writing medical information
6 directly from an individual regardless of whether the information
7 pertains to the individual or not, and use, share, or otherwise
8 disclose that information for direct marketing purposes, without
9 doing both of the following prior to obtaining that information:

10 (1) Disclosing in a clear and conspicuous manner that it is
11 obtaining the information to market or advertise products, goods,
12 or services to the individual.

13 (2) Obtaining the written consent of either the individual to
14 whom the information pertains or a person legally authorized to
15 consent for the individual, to permit his or her medical information
16 to be used or shared to market or advertise products, goods, or
17 services to the individual.

18 (d) This section does not apply to a provider of health care,
19 health care service plan, or contractor, as defined in Section 56.05.

20 (e) This section shall not apply to an insurance institution, agent,
21 or support organization, as defined in Section 791.02 of the
22 Insurance Code, when engaged in an insurance transaction, as
23 defined in subdivision (m) of Section 791.02 of the Insurance
24 Code, pursuant to all the requirements of Article 6.6 (commencing
25 with Section 791) of Chapter 1 of Part 2 of Division 1 of the
26 Insurance Code, and the regulations promulgated thereunder.

27 (f) This section does not apply to a telephone corporation, as
28 defined in Section 234 of the Public Utilities Code, when that
29 corporation is engaged in providing telephone services and products
30 pursuant to Sections 2881, 2881.1, and 2881.2 of the Public
31 Utilities Code, if the corporation does not share or disclose medical
32 information obtained as a consequence of complying with those
33 sections of the Public Utilities Code, to third parties for direct
34 marketing purposes.